

3. The FDIC, however, fails to allege sufficient facts supporting any of its legal claims against Mr. Pacocha. Further, the claims are not plead sufficiently to overcome the business judgment rule.

4. Lastly, the FDIC's negligence and breach of fiduciary duty claims are duplicative.

5. As such, the FDIC's Complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6), because it fails to state a claim upon which relief can be granted.

6. In further support of his Rule 12(b)(6) basis for dismissal, Mr. Pacocha has filed concurrently with this Motion his Memorandum of Law in Support thereof.

WHEREFORE, Defendant Thomas Pacocha respectfully requests that this Court dismiss the FDIC's Complaint in its entirety and with prejudice, and grant Mr. Pacocha such further and additional relief as this Court deems just and proper.

Dated: January 18, 2012

Respectfully submitted,

/s/ Steven M. Malina
One of the Attorneys for
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